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# The North–South Divide in International Environmental Law: Framing the Issues

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## 1. INTRODUCTION

The unprecedented degradation of the planet's vital ecosystems is one of the most pressing issues confronting the international community today. From the 1972 Stockholm Conference on the Human Environment[1] through the 2012 Rio +20 United Nations Conference on Sustainable Development,[2] the international community has responded to this crisis by adopting numerous treaties, declarations, UN General Assembly resolutions, customary rules, and judicial decisions that address specific environmental threats.

Despite the proliferation of laws and legal instruments to combat environmental degradation, the global economy continues to exceed ecosystem limits, thereby jeopardizing the health and well-being of present and future generations and threatening the integrity of the planet's biodiversity.[3] States differ in their contribution to global ecological destruction, their vulnerability to environmental harm, their capacity to address environmental problems, and the economic and political power they wield in multilateral environmental negotiations. While international cooperation is necessary to address global environmental degradation, the global environmental agenda has often been dominated by the priorities and concerns of affluent countries (such as nature conservation). The concerns of poor countries (such as social and economic development and poverty alleviation) are frequently marginalized.[4]

[1] UN, *Report of the United Nations Conference on the Human Environment*, Stockholm, Sweden, 5–16 June 1972, UN Doc. A/Conf.48/14/Rev. 1.

[2] UN, *Report of the United Nations Conference on Sustainable Development*, Rio de Janeiro, Brazil, 20–22 June 2012, UN Doc. A/Conf.216/16.

[3] United Nations Millennium Ecosystem Assessment, *Ecosystems and Human Well-Being: Synthesis* (Washington, DC: Island Press, 2005), pp. 1–24.

[4] R. Anand, *International Environmental Justice: A North-South Dimension* (Hampshire: Ashgate, 2004), pp. 3–6; C. G. Gonzalez, "Beyond Eco-Imperialism: An Environmental Justice Critique of Free Trade" (2001) 78 *Denver University Law Review* 979 at 985–986.

Because environmental issues are closely intertwined with economic issues, international environmental law has been and continues to be the site of intense contestation over environmental priorities, over the allocation of responsibility for current and historic environmental harm, and over the relationship between economic development and environmental protection. These conflicts have often resulted in inadequate compliance with existing environmental agreements as well as deadlocks in ongoing treaty negotiations, most notably climate change negotiations.[5]

## 2. SIGNIFICANCE OF THE VOLUME

This volume examines the ways in which the North–South divide has compromised the effectiveness of international environmental law and proposes a variety of strategies to bridge the divide. In this volume, the terms *North* and *South* distinguish wealthy industrialized nations (including the United States, Canada, Australia, New Zealand, Japan, and the member states of the European Union) from their generally less prosperous counterparts in Asia, Africa, and Latin America. Despite its heterogeneity, the global South shares a history of Northern economic and political domination, and Southern nations have often negotiated as a bloc (the Group of 77 plus China) to demand greater equity in international economic and environmental law.[6]

However, this volume also recognizes the conflicts and tensions *within* the North and the South. As the negotiations over climate change illustrate, the environmental priorities of certain Southern states, such as India and China, often diverge from those of more ecologically vulnerable nations, such as the small island states.[7] Furthermore, China's growing economic clout in the global South and middle-income Southern nations' acquisition of agricultural lands in Asia, Africa, and Latin America for biofuels production and to satisfy domestic food needs (the so-called land grabs) have generated South–South debates about sustainable investment.[8] Similarly, the European Union and the United States have frequently clashed over environmental policy, most notably over the regulation of genetically modified organisms and toxic chemicals and over efforts to address climate change.[9]

[5] Anand, note 4, pp. 5–9, 126–131.

[6] C. G. Gonzalez, "Environmental Justice and International Environmental Law," in S. Alam, M. J. H. Bhuiyan, T. M. R. Chowdhury, and E. J. Techera (eds.), *Routledge Handbook of International Environmental Law* (New York: Routledge, 2013), 77–97, p. 81.

[7] See chapter 20, M. Burkett, "A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy"; and chapter 10, R. Maguire and X. Jiang, "Emerging Powerful Southern Voices: Role of BASIC Nations in Shaping Climate Change Mitigation Commitments."

[8] T. Ferrando, "Land Grabbing Under the Cover of Law: Are BRICS–South Relationships any Different?" September 2014, www.tni.org. See chapter 11, C. Oguanaman, "Sustainable Development in the Era of Bioenergy and Agricultural Land Grab."

[9] D. E. Adelman, "A Cautiously Optimistic Appraisal of Trends in Toxics Regulation" (2010) 12 *Washington University Journal of Law and Public Policy* 377; C. G. Gonzalez, "Genetically

A systematic examination of international environmental law from a North–South perspective has never been conducted, and this volume seeks to fill that void. While some scholars have analyzed the North–South divide in relation to particular environmental problems[10] or principles[11] and have investigated how the colonial encounter shaped the doctrines and institutions of international law,[12] this is the first volume that examines the North–South divide in international environmental law in its historical context.

This book also acknowledges the important role of non-state actors in this field. For example, transnational corporations can serve as a significant source of financing for climate change mitigation and adaptation,[13] and corporate environmental and social responsibility initiatives have proliferated in recent years.[14] However, multinational companies headquartered in the North have been responsible for many of the environmental and human rights violations in the South,[15] as demonstrated by the *Ogoniland* case in Nigeria[16] and the litigation against Chevron in Ecuador.[17] Since they operate in the gray zone between international law and national law, transnational corporations have traditionally escaped scrutiny and accountability at the international level.[18] International trade, investment, and financial institutions (such as the World Bank, the World Trade Organization,

Modified Organisms and Justice: The International Environmental Justice Implications of Biotechnology" (2007) 19 *Georgetown Environmental Law Review* 583; see Chapter 10 R. Maguire and X. Jiang, "Emerging Powerful Southern Voices: Role of BASIC Nations in Shaping Climate Change Mitigation Commitments".

[10] Anand, note 4 (examining the North–South divide in relation to climate change, ozone depletion, and the hazardous water trade); K. Mickelson, "Leading Toward a Level Playing Field, Repaying Ecological Debt, or Making Environmental Space: Three Stories About International Environmental Cooperation" (2005) 43 *Osgoode Hall Law Journal* 138; K. Mickelson, "Competing Narratives of Justice in North–South Environmental Relations: The Case of Ozone Layer Depletion," in J. Ebbesson and P. Okowa (eds.), *Environmental Law and Justice in Context* (Cambridge: Cambridge University Press, 2009).

[11] L. Rajamani, *Differential Treatment in International Environmental Law* (Oxford: Oxford University Press, 2006).

[12] R. Falk, B. Rajagopal, and J. Stevens (eds.), *International Law and the Third World: Reshaping Justice* (New York: Routledge-Cavendish, 2008).

[13] United Nations Framework Convention on Climate Change (UNFCCC) Secretariat, "Investment and Financial Flows to Address Climate Change," 2007, http://unfccc.int.

[14] L. Catá Backer, "Multinational Corporations, Transnational Law: The United Nation's Norms on the Responsibility of Transnational Corporations as Harbingers of Corporate Social Responsibility as International Law" (2006) 37 *Columbia Human Rights Law Review* 287.

[15] B. Stephens, "The Amorality of Profit: Transnational Corporations and Human Rights" (2002) 20 *Berkeley Journal of International Law* 45 at 49–53.

[16] See *Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria* (the *Ogoniland Case*), Case No. ACHPR/COMM/AO44/1,OAUDoc.CAB/LEG/67/3 (2001), www.achpr.org/files/sessions/30th/comunications/155.96/achpr30_155_96_eng.pdf.

[17] M. A. Gómez, "The Global Chase: Seeking Recognition and Enforcement of the Lago Agrio Judgment Outside of Ecuador" (2013) 1 *Stanford Journal of Complex Litigation* 429; S. Romero and C. Krauss, "Ecuador Orders Chevron to Pay $9 Billion," *New York Times*, 14 February 2011.

[18] P. Simons, "International Law's Invisible Hand and the Future of Corporate Accountability for Violations of Human Rights" (2012) 3 *Journal of Human Rights and the Environment* 5.

and the International Monetary Fund) and sovereign wealth funds have likewise influenced both economic and environmental policy in the global South.[19] Finally, the book discusses the impact of indigenous mobilization, grassroots social movements, and transnational networks on the evolution of international environmental law.[20] These examples illustrate that the international community includes a range of actors and that it has moved away from the state-centric notion of traditional international law.

Virtually all areas of environmental concern display North–South divisions, and this volume has chosen some of these issues for in-depth analysis: water conflicts,[21] access to food,[22] forests and indigenous peoples,[23] trade,[24] investment,[25] energy,[26] extractive industries,[27] human rights,[28] climate change,[29] biodiversity,[30] land grabs,[31] and the hazardous waste trade.[32] While it is impossible to cover all environmental issues that give rise to the North–South divide in one volume, the

[19] See chapter 17, B. J. Richardson, "International Environmental Law and Sovereign Wealth Funds"; chapter 14, S. Alam, "Trade and the Environment: Perspectives from the Global South"; chapter 15, S. Puvimanasinghe, "From a Divided Heritage to a Common Future? International Investment Law, Human Rights, and Sustainable Development"; chapter 19, C. G. Gonzalez, "Food Justice: An Environmental Justice Critique of the Global Food System"; and chapter 28, J. Razzaque, "Access to Remedies in Environmental Matters and the North–South Divide."

[20] See chapter 18, S. L. Seck, "Transnational Corporations and Extractive Industries"; chapter 21, E. A. Kronk Warner, "South of South: Examining the International Climate Regime from an Indigenous Perspective"; chapter 22, J. Dugard and E. Koek, "Water Wars: Anti-Privatization Struggles in the Global South"; and chapter 24, D. Bonilla Maldonado, "International Law, Cultural Diversity, and the Environment: The Case of the General Forestry Law in Colombia."

[21] See chapter 22, J. Dugard and E. Koek, "Water Wars: Anti-Privatization Struggles in the Global South."

[22] See chapter 19, C. G. Gonzalez, "Food Justice: An Environmental Justice Critique of the Global Food System."

[23] See chapter 24, D. Bonilla Maldonado, "International Law, Cultural Diversity, and the Environment: The Case of the General Forestry Law in Colombia."

[24] See chapter 14, S. Alam, "Trade and the Environment: Perspectives from the Global South."

[25] See chapter 15, S. Puvimanasinghe, "From a Divided Heritage to a Common Future? International Investment Law, Human Rights and Sustainable Development."

[26] See chapter 25, L. Guruswamy, "The Contours of Energy Justice."

[27] See chapter 18, S. Seck, "Transnational Corporations and Extractive Industries."

[28] See chapter 8, L. J. Kotze, "Human Rights, the Environment and the Global South."

[29] See chapter 20, M. Burkett, "A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy"; chapter 10, R. Maguire and X. Jiang, "Emerging Powerful Southern Voices: Role of BASIC Nations in Shaping Climate Change Mitigation Commitments"; chapter 21, E. A. Kronk Warner, "South of South: Examining the International Climate Regime from an Indigenous Perspective"; and chapter 23, P. Govind and R. R. M. Verchik, "Natural Disaster and Climate Change."

[30] See chapter 9, J. Cabrera Medaglia, "Access and Benefit Sharing: North–South Challenges in Implementing the Convention on Biological Diversity and its Nagoya Protocol."

[31] See chapter 11, C. Oguanaman, "Sustainable Development in the Era of Bioenergy and Agricultural Land Grab."

[32] See chapter 12, Z. Lipman, "Trade in Hazardous Waste."

book highlights several significant examples where the divide is apparent and also where positive developments and contributions have helped bridge the divide. In short, the book introduces this rich yet hitherto uncharted area of scholarship. It seeks to provide an illustrative, rather than an exhaustive, list of issues that have been particularly contentious from a North–South perspective. It differs from the traditional environmental law textbook, research handbook, or treatise because it takes the perspective of the South, and emphasizes the need to address historical inequities and inadequacies in the international environmental law regime in order to improve its effectiveness and to reduce the gap between the global North and the global South. The book also recognizes the influential role of countries such as China that straddle the North–South divide. China sometimes replicates the trade and investment patterns of Northern countries (in the land grabs, for example) while at the same time maintaining its "developing country" status by negotiating with the G-77.[33] China's rise can produce strategic alliances that enhance the bargaining power of the South or, conversely, alliances that marginalize vulnerable states, such as the small island states and least developed countries.[34]

Recognizing the urgent need for North–South collaboration to address the grave environmental problems confronting the international community, this volume does not restrict itself to identifying obstacles and roadblocks. On the contrary, the book discusses some of the concessions that the South has been successful in winning from the North, such as transfer of technology and establishing international funds to help the Southern countries fulfill their international obligations. However, the book recognizes that these ostensibly positive developments may create additional opportunities for the North to control the South by withholding funds or placing conditions on their use.

## 3. COLONIAL AND POSTCOLONIAL ORIGINS OF THE NORTH–SOUTH DIVIDE

The persistent mistrust between the global North and the global South is grounded in colonial and postcolonial economic law and policy. The European conquest of Asia, Africa, and Latin America paved the way for contemporary economic and social inequality by transforming self-sufficient economies into economic satellites of Europe, promoting slavery and indentured servitude, and wreaking havoc on the

[33] See generally Ferrando, note 8; J. T. Gathii, "Beyond China's Human Rights Exceptionalism in Africa: Leveraging Science, Technology and Engineering for Long-Term Growth" (2013) 51 *Columbia Journal of Transnational Law* 664; C. G. Gonzalez, "China's Engagement with Latin America: Partnership or Plunder?", in E. Blanco and J. Razzaque (eds.), *Natural Resources and the Green Economy: Redefining the Challenges for People, States, and Corporations* (Leiden: Martinus Nijhoff Publishers, 2012), pp. 37–79.

[34] See chapter 10, R. Maguire and X. Jiang, "Emerging Powerful Southern Voices: Role of BASIC Nations in Shaping Climate Change Mitigation Commitments."

livelihoods, ecosystems, cultures, and lifeways of indigenous peoples.[35] Over time, Northern countries came to specialize in capital-intensive goods and to enjoy high standards of living while the colonized territories produced minerals, agricultural products, and other raw materials for the benefit of their colonial overlords.[36]

Most Southern countries were under colonial rule when the global North created the legal architecture for contemporary globalization. The World Bank, the International Monetary Fund (IMF), and the 1947 General Agreement on Tariffs and Trade (GATT) were designed to erode state sovereignty in order to facilitate the free flow of goods, services, and capital across national borders.[37] This legal framework enabled the North to fuel its economic expansion through the continued exploitation of the South's natural resources, trapping Southern countries in vicious cycles of poverty and environmental degradation and widening the North–South economic divide.[38] Moreover, the economic policies pursued by the North resulted in global environmental harms such as acid rain, ozone depletion, and climate change, with impacts not just on the present generation but also on generations to come.[39]

Despite commonalities in the colonial experience, it is difficult to define the "postcolonial era" because it does not include just one history and one set of countries, but rather ongoing relationships among multiple countries from the North and South.[40] However, in spite of the varied political and economic trajectories of the global South in the decades following political independence, most Southern countries were integrated into the global economy as exporters of raw materials and importers of manufactured goods.[41] This economic specialization rendered Southern countries vulnerable to the declining terms of trade for primary commodities relative to manufactured goods[42] and to the efforts of foreign investors to curtail national sovereignty in order to safeguard the profitability of their investments in resource-extractive industries.[43]

Newly independent countries of the South banded together in the decades following World War II to create a more equitable postcolonial world order. In 1955, representatives of twenty-nine newly independent nations of Africa and Asia met in Bandung, Indonesia and vowed to promote economic cooperation, human

[35] C. Ponting, *A Green History of the World: The Environment and the Collapse of Great Civilizations* (New York: Penguin Books, 1991), pp. 128–140, 194–212.
[36] Ibid, p. 222.
[37] See chapter 2, R. Islam, "History of the North–South Divide: Colonial Discourses, Sovereignty and Self-Determination."
[38] Ponting, note 35, pp. 194–223.
[39] Ibid, pp. 383–392.
[40] P. Childs and P. Williams, *An Introduction to Post-Colonial Theory* (New York: Routledge, 1997).
[41] L. Young, *World Hunger* (New York: Routledge, 1997), p. 41.
[42] Ibid, p. 42.
[43] K. Miles, *The Origins of International Investment Law: Empire, Environment and the Safeguarding of Capital* (Cambridge: Cambridge University Press, 2013), pp. 78–100.

rights, and self-determination, and to condemn new forms of imperialism.[44] The Bandung conference served as the catalyst for the coalition of Asian, African, and Latin American states (later known as the Group of 77 plus China) that would articulate its demands for economic justice and national self-determination through a variety of legal doctrines,[45] including permanent sovereignty over natural resources,[46] the right to development,[47] and the common heritage of mankind principle.[48] Southern countries used their numerical majority in the United Nations General Assembly to attempt to establish a New International Economic Order (NIEO) that would vindicate these demands and provide debt relief, preferential access to Northern markets, and the stabilization of primary commodity export prices.[49] Southern countries also sought to redress the enduring inequalities arising from the colonial encounter through the differential and more favorable treatment of Southern countries in both international economic law (special and differential treatment) and international environmental law (common but differentiated responsibility principle).[50]

The debt crisis of the 1980s and the rise of the free market model known as the Washington Consensus marked the untimely death of the NIEO.[51] The structural adjustment policies imposed by the IMF and the World Bank as conditions for debt relief required Southern nations to adopt a standard package of economic reforms that included privatization, deregulation, trade liberalization, reduction or elimination of social safety nets, and expansion of export production to service the foreign debt.[52]

In order to earn badly needed foreign exchange, debt-ridden Southern countries flooded world markets with minerals, timber, and agricultural products, thereby driving down prices and enabling the North to live beyond the constraints of its

[44] C. J. Lee, "Introduction: Between a Moment and an Era: The Origins and Afterlives of Bandung," in C. J. Lee (ed.), *Making a World After Empire: The Bandung Moment and Its Political Afterlives* (Athens: Ohio University Press, 2010), pp. 1–32.

[45] Ibid.

[46] UN General Assembly, *Resolution Adopted by the General Assembly: 1962 General Assembly Resolution on Permanent Sovereignty over Natural Resources*, 14 December 1962, GA Res. 1803 (XVII) / 17 UN GAOR Supp. (No.17) at 15; UN Doc. A/5217 (1962).

[47] UN General Assembly, *Declaration on the Right to Development*, 4 December 1986, UN Doc. A/Res/41/128.

[48] For a discussion of this principle, see J. Noyes, "Common Heritage of Mankind: Past, Present and Future" (2011–2012) 40 *Denver Journal of International Law and Policy* 447. See Chapter 4, S. Atapattu, "The Significance of International Environmental Law Principles in Reinforcing or Dismantling the North–South Divide," which discusses the role of this and other principles of international environmental law in relation to the North–South divide.

[49] R. Gordon, "The Dawn of a New, New International Economic Order?" (2009) 72 *Law and Contemporary Problems* 131 at 142–145; UN General Assembly, *Declaration of the Establishment of a New International Economic Order*, 1 May 1974, A/Res/S-6/3201.

[50] F. Ismail, "Rediscovering the Role of Developing Countries in GATT Before the Doha Round" (2008) 1 *Law and Development Review* 49 at 58–59; L. Rajamani, *Differential Treatment in International Environmental Law* (Oxford: Oxford University Press, 2006).

[51] Gordon, note 49 at 145–150.

[52] Ibid; Gonzalez, note 6, p. 82.

natural resource base.[53] Much of the environmental degradation experienced by Southern countries has been caused by export-oriented production to satisfy Northern demand, rather than by local consumption.[54] Indeed, communities in the South have traditionally led more sustainable lives than the consumerist societies of the North, as discussed by Judge Weeramantry in his separate opinion in the *Case Concerning the Gabcíkovo-Nagymaros Project*.[55]

The Washington Consensus exacerbated the North–South divide by reinforcing the South's dependence on the export of raw materials rather than facilitating the development of more dynamic economic sectors.[56] The World Trade Organization agreements that succeeded the 1947 GATT nominally granted Southern countries special and differential treatment (such as additional time to comply with WTO obligations), but failed to dismantle the subsidies and import barriers of greatest concern to Southern nations (particularly Northern agricultural subsidies that enabled Northern exporters to undercut Southern farmers).[57] The WTO also restricted the ability of Southern countries to use tariffs and subsidies to strategically promote potentially dynamic industries; dismantled the import barriers that protected nascent Southern industries from more technologically advanced Northern competitors; and imposed onerous new obligations in the areas of intellectual property, services, and investment.[58] Scholars of economic history have recognized that the United States, Japan, Germany, the United Kingdom, South Korea, and Taiwan achieved economic prosperity through protectionism. By depriving Southern countries of the tools used by the global North and by certain middle-income Southern countries to diversify and industrialize their economies while enhancing the protection of investors and intellectual property, the international economic order institutionalizes Southern poverty.[59]

The primary beneficiaries of the Washington Consensus have been the powerful transnational corporations that dominate the global economy. The reluctance of

[53] Ponting, note 35, p. 223.

[54] W. E. Rees and L. Westra, "When Consumption does Violence: Can There Be Sustainability and Environmental Justice in A Resource-Limited World?", in J. Agyeman, R. D. Bullard, and B. Evans (eds.), *Just Sustainabilities: Development in an Unequal World* (Cambridge: MIT Press, 2003), pp. 99–124, at 105, 110.

[55] *Case Concerning the Gabcíkovo-Nagymaros Project* (Hungary v. Slovakia) [1997] ICJ Reports 228.

[56] Gordon, note 49 at 149–150.

[57] F. J. Garcia, "Beyond Special and Differential Treatment" (2004) 27 *Boston College International and Comparative Law Review* 291. See chapter 19, C. G. Gonzalez, "Food Justice: An Environmental Justice Critique of the Global Food System."

[58] Garcia, note 57 at 298; Y. S. Lee, *Reclaiming Development in the World Trading System* (Cambridge: Cambridge University Press, 2006), pp. 41–42.

[59] H. Chang, *Good Samaritans: The Myth of Free Trade and the Secret History of Capitalism* (New York: Bloomsbury Press, 2008); H. Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (London: Anthem Press, 2002); A. Amsden, *The Developing World's Journey through Heaven and Hell* (Cambridge: MIT Press, 2009); E. Reinert, *How Rich Countries Got Rich... and Why Poor Countries Stay Poor* (New York: Caroll and Graf, 2007).

states to regulate the extraterritorial activities of their corporations and the difficulty of holding parent companies liable for the actions of their subsidiaries have resulted in corporate impunity for human rights and environmental abuses in Southern countries.[60] While some attempt has been made over the years to make corporate actors more socially responsible, these attempts have resulted in soft law measures without any real sanctions. International investment law has enhanced corporate power by requiring host governments to compensate foreign investors when efforts to regulate in the public interest diminish the profitability of the investment.[61] Even where Southern victims can assert a claim for relief against Northern states or corporations, these victims are hesitant to resort to legal action for fear of reprisal and withholding of aid, thereby reinforcing the North's domination of the South.[62] In addition, as explained in this volume, a form of financing called "project finance" has exacerbated corporate impunity with regard to human rights and environmental harms caused by large-scale energy and infrastructure projects, by facilitating the externalization of social and environmental risks.[63]

In sum, the persistence of extreme poverty in the global South is attributable not to random misfortune, but to a global economic order that systematically benefits the wealthy and disenfranchises the poor. As philosopher Thomas Pogge candidly observes:

> Our new global economic order is so harsh on the global poor, then, because it is formed in negotiations where our representatives ruthlessly exploit their vastly superior bargaining power and expertise, as well as any weakness, ignorance, or corruptibility they may find in their counterpart negotiators, to tune each agreement for our greater benefit. In such negotiations, the affluent states will make reciprocal concessions to one another, but rarely to the weak. The cumulative result of many such negotiations and agreements is a grossly unfair global economic order under which the lion's share of the benefits of global economic growth flows to the most affluent states.[64]

## 4. INTERNATIONAL ENVIRONMENTAL LAW AND THE NORTH–SOUTH DIVIDE

North–South conflicts originating in the economic realm have profoundly shaped the evolution of international environmental law and policy. The global North

[60] Gonzalez, note 6, pp. 92–94.
[61] Ibid, pp. 94–95.
[62] See chapter 28, J. Razzaque, "Access to Remedies in Environmental Matters and the North–South Divide"; chapter 20, M. Burkett, "A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy."
[63] See chapter 16, S. H. Baker, "Project Finance and Sustainable Development in the Global South."
[64] T. Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2008), p. 27.

industrialized and developed by exploiting the planet's natural resources without regard for the environmental consequences. Northern consumption patterns, which are increasingly emulated by Southern elites, have brought the planet's ecosystems to the brink of collapse and will constrain the development of options of present and future generations, particularly in the global South.[65] Indeed, some observers have argued that the North owes an ecological debt to the South for "resource plundering, unfair trade, environmental damage, and the free occupation of environmental space to deposit waste."[66]

As natural resources become increasingly scarce, Southern countries are concerned about harnessing them to promote social and economic development. Many Southern nations view Northern demands for environmental protection as hypocritical, given the North's enormous ecological footprint, and as a threat to Southern efforts to eradicate poverty and provide citizens with the basic necessities of life.[67]

The global North and the global South also have conflicting environmental priorities and concerns. While the North has historically prioritized global environmental problems (such as ozone depletion and protection of endangered species), the South has often emphasized environmental problems with more immediate impacts on vulnerable local populations, including the hazardous waste trade, desertification, food security, access to safe drinking water and sanitation, and indoor air pollution caused by lack of access to sustainable energy.[68]

As the South has pressed the North to shoulder primary responsibility for major environmental problems (such as climate change) in light of the North's disproportionate contribution to global environmental degradation,[69] the North has resisted responsibility for past wrongs, and has reluctantly accepted the principle of common but differentiated responsibility on the basis of the North's superior financial and technical resources rather than that of historic responsibility.[70] While the North has unilaterally imposed environmental requirements on Southern products in order to combat "eco-dumping," the South has perceived these requirements as disguised protectionism, and as arbitrary and inequitable given the North's voracious consumption of the planet's natural resources and unwillingness

[65] K. Mickelson, "Leading Toward a Level Playing Field, Repaying Ecological Debt, or Making Environmental Space: Three Stories About International Environmental Cooperation" (2005) 43 *Osgoode Hall Law Journal* 138 at 150–154. See chapter 3, R. Gordon, "Unsustainable Development."

[66] E. Paredis, G. Geominne, W. Vanhove, F. Maes, and J. Lambrecht, *The Concept of Ecological Debt: Its Meaning and Applicability in International Policy* (Ghent: Academia Press, 2007), p. 7.

[67] See chapter 3, R. Gordon, "Unsustainable Development."

[68] Gonzalez, note 4 at 1008–1009; Anand, note 4, p. 6.

[69] Anand, note 4, p. 5.

[70] Gonzalez, note 6, pp. 91–92. See also chapter 4, S. Atapattu, "The Significance of International Environmental Law Principles in Reinforcing or Dismantling the North-South Divide."

to provide Southern nations with the financial and technical resources necessary to comply with these environmental requirements.[71]

The North–South divide is further exemplified in the realms of trading toxic chemicals and waste. Due to increased scientific understanding of the risks posed by toxic chemicals, the North has at times prohibited the sale of certain chemicals within its territory, but has nevertheless permitted the export of these chemicals to countries in the South. The concern is the South's lack of capacity to make informed decisions about the safe handling and disposal of such chemicals, especially considering that sustainable management of chemicals can generate significant economic benefits.[72] Another related issue is the North's export of toxic waste to the South on the ground that such disposal is more "cost-effective." A prime example is the export of end-of-life ships containing toxic materials from the United States and the European Union to Asia for breaking and recycling.[73] Again, the North's export of such waste despite the South's limited capacity to manage it in an environmentally sound manner reinforces the historical divide, which has led to allegations of "toxic colonialism" by the global South.[74]

Of course, the North–South divide is an oversimplification, and this book explores the complexity and heterogeneity within the broad categories of *North* and *South*. Climate change provides an excellent example of alliances and tensions that transcend the traditional North–South binary. Facing the potential loss of territory, the Alliance of Small Island States (AOSIS) favors deep cuts in greenhouse gas emissions, while BASIC countries generally want Northern states to take the lead in climate change mitigation, adaptation, financing, and technology transfer. Low-lying countries such as Bangladesh have joined forces with the AOSIS; least developed countries and members of the African group have also intervened from time to time.[75] Concerned that deforestation will distract attention from the need to reduce emissions, Brazil and other countries of the Amazon basin have resisted efforts to regulate the Amazon rainforest under the climate change

[71] Gonzalez, note 4 at 1004–1009; chapter 14, S. Alam, "Trade and the Environment: Perspectives from the Global South."

[72] P. S. Chasek and D. L. Downie, *Global Environmental Politics* (Boulder: Westview Press, 2013), pp. 131–151.

[73] M. S. Karim, "Environmental Pollution from the Shipbreaking Industry: International Law and National Legal Response" (2010) 22 *Georgetown International Environmental Law Review* 185.

[74] See chapter 12, Z. Lipman, "Trade in Hazardous Waste."

[75] See chapter 10, R. Maguire and X. Jiang, "Emerging Powerful Southern Voices: Role of BASIC Nations in Shaping Climate Change Mitigation Commitments"; chapter 20, M. Burkett, "A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy." Climate-vulnerable Southern countries, including Bangladesh, Nepal, Vietnam, Rwanda, and Ghana, have worked with small island nations to establish the Climate Vulnerable Forum – a group of nations seeking rapid and ambitious action on climate change. See Climate Vulnerable Forum, "CVF Declarations," www.thecvf.org (setting forth the declarations of the Climate Vulnerable Forum).

regime. However, recognizing that there could be significant financial support for forest conservation and management, the Alliance of Rainforest Nations is actively supporting the Reducing Emissions from Deforestation and Forest Degradation (REDD) mechanism.[76] Oil-exporting countries form yet another group, while the European Union seems to be increasingly isolated among Northern countries in its support for significant emission reductions. Deep divisions between the United States and the European Union have led to loose coalitions of non-EU Northern countries, such as the JUSCANZ group (Japan, United States, Canada, Australia, and New Zealand).[77] These loose alliances and divisions within the global North and the global South complicate the treaty-negotiating process and, ultimately, international law-making.

## 5. THEORETICAL PERSPECTIVES AND APPROACHES

This volume explores the past, present, and future of international environmental law through a different lens – that of the priorities and concerns of the global South. Despite the pervasive North–South conflicts in international environmental law, much of the scholarly literature published in the global North fails to fully appreciate and address the tensions between Northern environmental priorities and Southern needs and aspirations. While some texts refer to these tensions, particularly in relation to climate change negotiations, they rarely place it in historic context. This book seeks to fill the gap in the existing literature and inform the research agenda by discussing the history of the North–South divide and its contemporary manifestations in a variety of areas of international environmental law and policy. Without an understanding of North–South tensions in historical context, it is impossible to understand the current state of international environmental law, let alone address the tensions. The contributors to this volume are scholars from the global North and the global South who approach the topic from a variety of theoretical and practical perspectives and approaches.

Although the individual chapters reflect the heterogeneous backgrounds and perspectives of the contributors, the volume as a whole owes an intellectual debt to the scholarship of the Third World Approaches to International Law (TWAIL) movement.[78] While this movement is by no means monolithic, TWAIL scholarship largely examines the ways in which the colonial legacy underpins contemporary international law.[79] TWAIL scholars explain how international law was used to

[76] See D. Hunter, J. Salzman, and D. Zaelke, *International Environmental Law and Policy*, 4th ed. (New York: Foundation Press, 2011), p. 675; S. Oberthur and H. E. Ott, *The Kyoto Protocol: International Climate Policy for the 21st Century* (Berlin: Springer, 1999), pp. 13–32.

[77] Oberthur and Ott, note 76, pp. 13–32.

[78] M. Mutua, "What is TWAIL?", American Society of International Law, Proceedings of the 94th Annual Meeting (5–8 April 2000), pp. 31–38.

[79] O. C. Okafor, "Newness, Imperialism, and International Legal Reform in our Time: a TWAIL Perspective" (2005) 34 *Osgoode Hall Law Journal* 171 at 176.

justify the conquest of nature and of non-European peoples in the name of "civilization" and "development," and expose and critique the contemporary uses of international law to legitimate Northern hegemony.[80] TWAIL's goal is to make real "the promise of international law to transform itself into a system based, not on power, but justice."[81] This volume draws upon TWAIL scholarship but seeks to go further by exploring both the emancipatory and hegemonic role of international law and discourse in the context of a wide range of North–South environmental disputes.

This volume is also influenced by the work of scholars who view the North–South divide in international environmental law through the framework of environmental justice.[82] The environmental justice movement arose in the United States as a grassroots response to the disparate exposure to environmental hazards of low-income communities and communities of color.[83] Environmental justice has since been adopted as the language of resistance by a variety of local and transnational environmental movements in both the North and the South – including movements for climate justice, water justice, food justice, and energy justice.[84]

The environmental justice framework provides a compelling moral narrative with justice at its core as an antidote to the technocratic, ahistorical approach that dominates much of mainstream environmental discourse. The objective is to reconceptualize environmental problems as manifestations of social, economic, and environmental injustice between and within nations and to place them in historical context rather than treating them as technical problems to be overcome by scientific innovation or more effective planning.[85] As Part IV of the volume demonstrates, many of the contributors to this volume draw explicitly or implicitly on the concept of environmental justice to frame their discussion of North–South environmental inequities as well as grassroots environmental struggles.[86]

[80] A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

[81] A. Anghie, "What Is TWAIL: Comment," American Society of International Law, Proceedings of the 94th Annual Meeting 39–40 (5–8 April 2000), p. 40.

[82] Gonzalez, note 6, pp. 77–97; J. Ebbesson and P. Okowa (eds.), *Environmental Law and Justice in Context* (Cambridge: Cambridge University Press, 2009); Anand, note 4.

[83] Gonzalez, note 6, pp. 79–80.

[84] J. Martinez-Alier, I. Angulelovski, P. Bond, D. Del Bene, F. Demaria, J. Gerber, L. Greyl, W. Haas, H. Healy, V. Marin-Burgos, G. Ojo, M. Porto, L. Rijnhout, B. Rodriguez-Labajos, J. Spangeberg, R. Warlenius, and I. Yanez, "Between Activism and Science: Grassroots Concepts for Sustainability Coined by Environmental Justice Organizations" (2014) 21 *Journal of Political Ecology* 19 at 27–42.

[85] Ibid at 84.

[86] See chapter 19, C. G. Gonzalez, "Food Justice: An Environmental Justice Critique of the Global Food System"; chapter 20, M. Burkett, "A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy"; chapter 25, L. Guruswamy, "The Contours of Energy Justice"; chapter 22, J. Dugard and E. Koek, "Water Wars: Anti-Privatization Struggles in the Global South"; chapter 21, E. A. Kronk Warner, "South of South: Examining the International Climate Regime from an Indigenous

The concept of environmental justice is grounded in international human rights law, but has clear connections to several international environmental law principles based on notions of equity and justice, including common but differentiated responsibility (CBDR), inter- and intragenerational equity, and sustainable development.[87] According to Hunter, Salzman, and Zaelke, the CBDR principle – which continues to create intense North–South debate – highlights the need for coordinated action by both the North and the South, with each nation's responsibility adjusted according to the level of capacity and contribution to global environmental problems.[88] Furthermore, they point out that while the principle remains a cornerstone of international environmental law and policy, it continues to be a point of debate for both the North and South.[89] Indeed, as Atapattu points out in her chapter in this volume, the debates surrounding the adoption of this principle proved explosive, as the United States in particular sought to cast this principle as a reflection of the North's "superior" technical and financial capacity rather than its duty to provide redress for past harm, thereby reinforcing colonial patterns of domination.[90]

Another common thread that runs through the volume is the notion of sustainable development, which many contributors use as an overarching framework to situate their analysis of various environmental issues identified for in-depth discussion. The Johannesburg Declaration emphasized that sustainable development comprises three pillars: economic development, social development, and environmental protection.[91] Southern countries have utilized the three pillars of sustainable development to demand economic and social justice for their citizens in addition to environmental protection. The adoption of the Millennium Development Goals and the focus on sustainable development since its explicit emergence in *Our Common Future* emphasize the need for a collective approach that involves all stakeholders, including both the North and South. International environmental law relies upon consensus, and this volume highlights the South's historic and potential contribution to its development. However, further integration of the South and of non-elite stakeholders, particularly vulnerable communities, is needed, and this volume illustrates the positive practices that can be implemented within the international environmental law regime to incorporate Southern perspectives.

Perspective"; chapter 24, D. Bonilla Maldonado, "International Law, Cultural Diversity, and the Environment: The Case of the General Forestry Law in Colombia"; chapter 18, S. Seck, "Transnational Corporations and Extractive Industries."

87 Gonzalez, note 6, pp. 85–87, 90–92.

88 Hunter et al., note 76, p 464.

89 Ibid, p. 465.

90 See chapter 4, S. Atapattu, "The Significance of International Environmental Law Principles in Reinforcing or Dismantling the North–South Divide."

91 *Johannesburg Declaration on Sustainable Development: Report of the World Summit on Sustainable Development*, Johannesburg, 4 September 2002, UN Doc. A/CONF. 199/20, Resolution 1, Annex, pp. 1–5.

## 6. OVERVIEW OF THIS VOLUME

The volume proceeds in five parts: Part I addresses the history of the North–South divide and global environmental governance; Part II discusses selected environmental law examples; Part III examines trade, investment, and sustainable development; Part IV addresses environmental justice and vulnerable groups; and finally, Part V is devoted to a discussion of options and challenges.

### 6.1 *History of the North–South Divide and Global Environmental Governance*

Part I lays the groundwork for the entire volume by exploring the theory and history of the North–South divide in international law, including its colonial underpinnings. It then undertakes a critical examination of the concept of sustainable development, followed by a discussion of the role of international environmental law principles in reinforcing or dismantling the North–South divide. One of the themes explored in the volume is the South's contribution to the development of international law generally, and international environmental law in particular.

Part I also examines global environmental governance (including its institutional framework) from a Southern perspective. The dominance of the North in global environmental governance can negatively impact the contributions of the South. It follows that reform will be required to enhance the South's participation in the development and implementation of international environmental law. Capacity-building, for example, is essential because Southern countries often lack the technical expertise and the resources to participate effectively in global environmental negotiations, such as the highly technical negotiations regarding, for example, climate change, biodiversity, and the hazardous waste trade.

### 6.2 *Selected International Environmental Law Examples*

While the North–South divide is apparent in all areas of international environmental law, Part II of this volume examines the divide in practice (and the ways in which it might be overcome) by using selected international environmental law issues as examples. Perhaps the most pressing environmental issue facing the globe today is climate change (although localized problems in the South, such as poverty and access to water, energy, and food, also demand immediate attention). Four chapters of this volume are devoted to climate change, while several other chapters refer explicitly to it.[92] Climate change is an issue that both the North and South

[92] See chapter 21, E. A. Kronk Warner, "South of South: Examining the International Climate Regime from an Indigenous Perspective"; chapter 20, M. Burkett, "A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy"; chapter 10, R. Maguire and X. Jiang, "Emerging Powerful Southern Voices: Role of BASIC

have a vested interest in addressing, and the recent lack of progress at the global level is indicative of continued division between the goals of the North and of the South. For example, the Rio+20 report acknowledges the importance of addressing climate change (for its own sake and for the benefits it may have in addressing sustainable development), and also highlights the vulnerability of the South, particularly small island developing states.[93] Given the urgency of the issue, the report concludes that the current actions of the states are inadequate. As Hunter et al. note, "[a]t times, divisions between blocs of countries over the negotiations of the climate change regime have been as intense as any issues outside war and national security."[94] The international community will have to come up with a solution to the plight of small island states when they are no longer able to sustain their populations due to sea-level rise and the consequent inundation of their land. Climate policy may converge with migration policy and national security policy as climate refugees from small island nations and other vulnerable locations are compelled to migrate across national borders to protect their lives and livelihoods.[95]

## 6.3 *Trade, Investment, and Sustainable Development*

A unique feature of the volume is its discussion of international economic law and its relationship to specific environmental issues from a North–South perspective. Part III of the volume contains chapters on trade,[96] investment,[97] project finance,[98] sovereign wealth funds,[99] and extractive industries,[100] which highlight several issues: (a) the relationship between international economic law and sustainable development; (b) the role of Northern states in perpetuating the North–South divide through international trade, finance, and investment law; (c) the impunity of corporate actors with regard to human rights and environmental violations; (d) the advantages and drawbacks of social responsibility initiatives as a means of enhancing the human rights and environmental performance of transnational corporations,

Nations in Shaping Climate Change Mitigation Commitments"; chapter 23, P. Govind and R. R. M. Verchik, "Natural Disaster and Climate Change."

[93] UN, note 2.

[94] Hunter et al., note 76, p. 674.

[95] M. Burkett, "Climate Refugees", in S. Alam, M. J. H Bhuiyan, T. M. R. Chowdhury, and E. J. Techera (eds.), *Routledge Handbook of International Environmental Law* (New York: Routledge, 2013), pp. 717–729.

[96] See chapter 14, S. Alam, "Trade and the Environment: Perspectives from the Global South."

[97] See chapter 15, S. Puvimanasinghe, "From a Divided Heritage to a Common Future? International Investment Law, Human Rights and Sustainable Development."

[98] See chapter 16, S. H. Baker, "Project Finance and Sustainable Development in the Global South."

[99] See chapter 17, B. J. Richardson, "International Environmental Law and Sovereign Wealth Funds."

[100] See chapter 18, S. Seck, "Transnational Corporations and Extractive Industries."

sovereign wealth funds, and other lenders and investors; and (e) conflicts among the Northern "green" agenda, Southern demands for social and economic development, and the aspirations of historically marginalized communities.

## 6.4 *Environmental Justice and Vulnerable Groups*

As noted earlier in this chapter, a significant number of contributors to this volume use environmental justice as a normative framework. Part IV of the volume is devoted to a discussion of vulnerable groups (and states) through the lens of environmental justice. Thus, indigenous peoples, small island states, those affected by inequitable access to food, energy, and water, and those disproportionately affected by natural disasters related to climate change are the subject of Part IV. One of the lessons of Part IV and of other chapters in this volume is that international environmental law has been shaped not just by states and international institutions, but also by the organized resistance of indigenous peoples, vulnerable states, and transnational social movements.[101] These chapters also emphasize the legal and moral obligations of all states, both affluent and poor, to respect, protect, and fulfill the human rights of marginalized populations within and beyond their own borders.[102]

## 6.5 *Challenges and Options*

Part V discusses challenges that transcend many of the issues identified in this book, including the enforcement of international environmental obligations, particularly given the South's limited capacity for environmental reporting and review. Inadequate enforcement is a significant obstacle to the success of international environmental law, and the problem could be addressed, at least in part, through the greater involvement of the South in the development of environmental practices, policies, and mechanisms. This section also discusses participation in environmental governance by the communities most directly impacted by environmental degradation to

[101] See, e.g., chapter 24, D. Bonilla Maldonado, "International Law, Cultural Diversity, and the Environment: The Case of the General Forestry Law in Colombia"; chapter 21, E. A. Kronk Warner, "South of South: Examining the International Climate Regime from an Indigenous Perspective"; chapter 22, J. Dugard and E. Koek, "Water Wars: Anti-Privatization Struggles in the Global South"; chapter 20, M. Burkett, "A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy"; chapter 19, C. G. Gonzalez, "Food Justice: An Environmental Justice Critique of the Global Food System"; chapter 18, S. Seck, "Transnational Corporations and Extractive Industries."

[102] See e.g. chapter 25, L. Guruswamy, "The Contours of Energy Justice"; chapter 19, C. G. Gonzalez, "Food Justice: An Environmental Justice Critique of the Global Food System"; chapter 21, E. A. Kronk Warner, "South of South: Examining the International Climate Regime from an Indigenous Perspective"; chapter 20, M. Burkett, "A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy"; chapter 18, S. Seck, "Transnational Corporations and Extractive Industries."

ensure that the environmental discourse is infused with the needs and concerns of the most vulnerable, rather than being co-opted by elites.[103] Finally, the section situates international environmental law within the broader corpus of international law (including international economic law and international human rights law) and discusses the need to harmonize and integrate these areas of law from a Southern perspective.

One way of overcoming the North–South divide is to promote South–South cooperation.[104] As one of the chapters in Part V explains, South–South cooperation emerged when the decolonization process ended. Despite the many divisions within the South, Southern countries often negotiate with the North as a bloc to enhance their ability to secure concessions. The adoption of the CBDR principle amid opposition from the North is a good example.

Part V also discusses remedies available under international law from a North–South perspective[105] and concludes that while many remedies are ostensibly available to victims from the South (both individuals and states), in practice they are reluctant to avail themselves of these remedies due to fear of reprisals from the North, including the withholding of development aid. By way of illustration, when Tuvalu, a small island state in the Pacific which is facing the prospect of losing its territory due to rising seas, threatened to file legal action against the United States for its contribution to climate change, the United States threatened to withhold development assistance to Tuvalu. These power imbalances and the threat of sanctions prevent Southern states from seeking remedies from powerful Northern states, a dynamic reminiscent of past colonial patterns of domination.

The final chapter compares sustainable development with the emerging discourse on the green economy.[106] It cautions against unraveling the gains made with regard to sustainable development by ignoring the three pillars of sustainable development and the principle of integration and taking us back to the old development paradigm with its profligate consumerism, which has proven to be totally unsustainable.

## 7. AREAS FOR FURTHER RESEARCH

We acknowledge that the issues we have chosen for analysis in this volume represent only the tip of the iceberg and that there are many more issues that

[103] See chapter 27, L. De Silva, "Public Participation in International Negotiation and Compliance."
[104] See chapter 26, K.L. Koh and N. Robinson, "South–South Cooperation: Foundations for Sustainable Development."
[105] See chapter 28, J. Razzaque, "Access to Remedies in Environmental Matters and the North–South Divide."
[106] See chapter 29, S. Alam and J. Razzaque, "Sustainable Development versus Green Economy: The Way Forward?"

require analysis from a North–South perspective. These include migration associated with environmental degradation, particularly climate change, biosafety, oceans and marine resources, hazardous chemicals, shipbreaking, electronic waste, and projects under the REDD mechanism.

In addition, the following issues arise in many of the chapters in the volume and are worth highlighting. These issues require a major reorienting of the global economic system if we are serious about addressing the disparities in the global community: (a) regulation of transnational corporations; (b) restructuring of international economic law and its interface with sustainable development; (c) the need to reconceptualize development; (d) the danger that the BASIC countries will reproduce the patterns of unsustainable development and patterns of economic domination that created the North–South divide; and (e) the need to ensure environmental justice and the protection of human rights, particularly of the most vulnerable, including ensuring gender equality. While sustainable development was advanced as an alternative paradigm to the existing "development at any cost" trajectory, many states have paid only lip service to sustainability. Exceeding ecological limits is ultimately catastrophic for all, especially the most vulnerable. We can learn from communities that have managed to live within ecological limits. One of the major obstacles to overcoming the problems discussed in the book is that the South often seeks to emulate the Northern example of what constitutes a decent standard of living, despite the fact that the planet cannot sustain that kind of "development" within its ecological limits.

Finally, we would like to offer some suggestions as to how this volume might be used. We had multiple constituencies in mind when we embarked upon this project and our vision was to ensure that this book would be useful to all these constituencies, both in the North and in the South. This volume is offered as a supplement to the existing scholarly literature on international environmental law, much of which does an excellent job of articulating the issues. However, we felt that a crucial part of the story was missing, and we have tried in this volume to supply the missing pieces – offering a North–South perspective grounded in the colonial encounter with environmental justice and sustainable development as overarching frameworks. Thus, we hope that environmental law scholars, policymakers, treaty negotiators, TWAIL scholars, and scholars of international law and international relations across the world – whether they are based in the North or the South – will use this volume in their teaching, research activities, policy work, and treaty negotiations.

We have been fortunate to have a wide group of scholars and practitioners contributing to this volume. While the majority of contributors are from academia, we have included chapters from practitioners affiliated with international organizations, highly respected civil society organizations, and think tanks. We strongly believe that the diverse group of contributors enriches our volume by providing multiple viewpoints and approaches to the issues under discussion. Furthermore,

we strove hard to include as many contributors from the global South as possible and to ensure that the contributors from the global North appreciated the central theme of the book. Without an understanding of the North–South tensions that underscore many of the current environmental issues, it is often difficult to appreciate the full extent of the environmental challenges facing the global community today. We hope that this publication will contribute to the existing literature on international environmental law, providing a different lens through which to understand its evolution, the compromises, the political debates, the limitations and nuances, and the present state of the law.

We do not pretend that the path ahead of us is easy. The problems we face are large and can often seem insurmountable. In order to solve them, we need all voices at the table and all hands on deck. These problems are urgent. The clock is ticking and the landscape is more complicated than ever. However, legal and policy frameworks that do not adequately reflect the interests of the global South have no chance of succeeding. An ecologically sustainable planet is impossible in a world plagued with significant and growing inequalities.